P-13

G. R. S. 59]

GPB—15,000—22-7-14

GENERAL AND REVENUE SECRETARIAT.

1915.

(S. R)

File No. 31-13

Serial Nos. 74 & 79

Papers Filed.

Month March 15

SUBJECT.

Adjudication of stamp duty on certain documents impounded in the Bangalore District

PREVIOUS REFERENCES.	LATER REFERENCES.

G.R.S. 11] 1914.

GENERAL AND REVENUE SECRETARIAT.

(S.R.)

NOTES.

File No. 31-13

FILE HEADING.

Adjudication of Stamp duty on certain documents impounded in the Bangalore Dt.

From

The Deputy Commissioner, Bangalore Dt.

No. S.822 Dated 7.4.14. Received 8.4.14

Diary No. 4031	Enclos. 1 file 'Spare Copies.	Serial No. 7

BRIEF ABSTRACT OF LETTER.

Solicits instructions as to whether a certificate under Sec. 40 (1) of the Stamp Regulation could be endorsed on a document, which cannot be called an instrument as defined in the Regulation.

NOTES AND ORDERS.

The facts of the case are as follows:—

A lease deed and a counterpart thereof were executed between Mr S. Shamanna, Advocate, Bangalore, and Mr L.A. Pourwal & others. The names of the parties not having been interchanged in the

NOTES—First Sheet.

GPB—35,000—15-6-12

G. R. S. 12]

General and Revenue Secretariat. | S.R File No. 31 of 1913.

Serial No.

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This is not technical 'impounding' under the Stamp Regs. - It was only a reference to the Dy Com^r as to what the nature of the instrument & proper stamp duty was. The Reg^n Dept^t was not sure that the document was not duly stamped - by

Counterpart ~~lease~~ of the deed, the Sub Registrar, Bangalore, * impounded it under instructions of the District Registrar, and sent it to the Deputy Com^r for adjudication of stamp duty thereon. The Dy Com^r ordered that the language of the document was defective & the names of the executant and claimants as entered in the counterpart may be got altered (by summoning the parties) in accordance with the true ~~nature~~ meaning of ~~such~~ the ~~ins~~ instrument. But the Sub Registrar doubted the correctness of the procedure and sought the instructions of the Dt Registrar, who replied that the order of the Dy Com^r may be carried out. Notices were accordingly given to the parties calling upon them to appear before the Sub Registrar and effect the necessary alterations, but they did not choose to do so. The Sub Register reported the matter to the District Registrar, who now requested the Dy Com^r to reconsider his former decision, as there was no authority to insist on the document being altered in the manner suggested. The Dy Com^r, however, stated in reply that the so called document was no document at all, until the ~~it was~~ and that, until it was altered, it could not be construed either as a duplicate or as a counterpart. The Dt Registrar

language was correct

NOTE—Contn. sheet.

R. S. 12]

General and Revenue Secretariat. | S.R File No. 31 of 1913.

Serial No.

then submitted the case for the orders of the D.G. of Registration, who replied that if the Dy Com^r was of opinion that the document was not such a one as could be brought under any section of the Schedule of the Stamp Regulation, and as such not chargeable with duty, he should have recorded a note to that effect under Sec. 40(1) of the Regulation instead of returning it for alteration. In support of this view a decision of the Madras Rev Board was quoted, to the effect that a Revenue Officer has no power to alter in any way, and certainly not for purpose of stamp duty, a document impounded and sent to him for adjudication and that he must deal with it as it is sent to him.

Board's Proceedings no. 382 & 5.2.1885. (Page 65 of the Madras Stamp Manual) — This decision means that the Rev. Officer should not make corrections in a document himself — It does not preclude him from sending back a document for correction if the language is defective

2. The Dy Com^r adheres to his former opinion that the document as it stands is no instrument as defined in the Regulation, and solicits instructions as to whether a certificate as directed by the D.G. of Registration may be endorsed on it under Sec. 40, cl. (1).

3. The alteration suggested by the Dy Com^r does not seem to be such an alteration as is contemplated in the Procs of the Board of Rev referred to.

NOTE—Contn. sheet.

GPB—25,000—2-11-14

[R. S. 12]

General and Revenue Secretariat. | S. R File No. 31 of 1913.

Serial No.

Its object is not to increase or decrease the Stamp Duty on the document, but to get a technical defect in the deed remedied. That such a course is permissible seems to be clear from another case in which the Board of Rev ordered the Collector to return to the executant a document, for which a Court Fee Stamp was used in lieu of a non-judicial stamp by error, and which was impounded on that account. Further it is doubtful whether, when the document in question is styled a Counterpart and is written upon a proper stamp paper, the Dy Com^r may certify under Sec 40(1) of the Stamp Reg^n, that the instrument is not chargeable with duty, merely because a technicality in the form of it is not observed.

Boards Proceedings No. 600 of 23.2.1885. (Page 65 of the Madras Stamp Manual)

Submitted for orders.

ASR 10.8 1/12

4. The document is the counterpart of an agreement and as such there is no doubt or difficulty in saying what the stamp duty required is. The language being however defective & not in agreement with the purport of the document, the Dy Com^r seems to have

NOTE—Contn. sheet.

R. S. 12]

General and Revenue Secretariat. | S.R. File No. 31 of 1913.

Serial No.

Asked the Sub-Regr to get it rectified -

5. The case is not one in which an order under ~~Article~~ Sec. 40 clause (1) declaring it to be duly stamped or ordering the levy of duty and penalty is necessary - and the action taken by the Dr Genr seems to be correct - as he is informed according

2-12-14

~~Est assessor~~ (Secy)

6. The Govt Adv. may be consulted U.O.

Dwan 10/12

7. Forwarded U.O. to the Govt Advocate for favour of opinion -

Ro. S Shanmugam 10/12

No 7869 8/10-12-14 with a copy of Madras Stamp Manual

U.O. 33 of 14-15 -

8 - There are two documents, one styled ~~purporting to be~~ a lease & the other a Counterpart. The instrument engrossed on a stamp paper of the value of Rs 75/- purports to be a rental deed executed by the lessees to the lessor & is signed by them in the presence of the attesting witnesses. This document must therefore be treated as the lease deed between the parties. The Counterpart of it should be an instrument purporting to be executed by the

Ir Rm 15/12

NOTE—Contn. sheet.

G. R. S. 12]

General and Revenue Secretariat. | S. R. File No. 31 of 1913.

Serial No.

lessor in favor of the lessee, & it should bear a stamp of the value of one rupee. The Counterpart in question bears the proper stamp and is executed by the proper person, but ~~in~~ the recital in the body of the document shows that it was meant to be executed by the lessee to the lessor. It is an obvious error.

9. There being, however, no question of the instrument not being duly stamped there could possibly be no impounding of it under Sec 33 of the Stamp Reg.^n. The instrument was not impounded by the D.^t Com.^r himself under Sec 33, and it could not have been so done; nor was it sent to him under Sec 38 (2). Sec 40 has therefore no application & consequently a certificate under Sec 40 is not called for.

Srinivasamurthy
for A.G.

12.12.14.

NOTE—Contn. sheet.

GPB—25,000—2-11-14

General and Revenue Secretariat. | S. R. File No. 31 of 1913.

Serial No.

10.
Sub? — The Govt. advocate also is of opinion that a certificate under Section 40 is not necessary — Dr. Cnr may be informed accordingly. Put up draft.
15/12 — 27/12

11.
Draft submitted.
108 571 (1st member)
Draft appd by First member 4.2.15
Issue 5/2
9.1.15

Rom 15/1/15

20. The Deputy Commr Bangalore vide No 4021 dt 15-2-15 states that a certificate under section 40 is not called for.

NOTE—Contn. sheet.

From 8/4/14 191 Legs

The Deputy Commissioner

To Darjeeling District

The Secretary to Government
General Revs Deptto

Dated 6.4.14

Despatched 7-4-14.

Received

General No. 5822.
No.

Enclosure No. one file of records
Contg one document

Requests instructions whether a certificate under sec 40(1) of the Stamp regulations could be endorsed on a document - no instrument -

DIARY No. 4031

10/3-10/14

SECTION SR

FILE No. 3/13

SERIAL No. 7.

No.

Office of the Deputy Commissioner
Bangalore District
Dated 6th/7th April 1914

From,

K. Chandy Esquire, B.A.
Deputy Commissioner
Bangalore District

To

K. R. Srinivasa Iyengar Esquire, M.A.
Secretary to Government
General and Revenue Departts.
Bangalore

Sir,

In forwarding herewith the file of records ending with the Bangalore District Registrar's docket No. 351 dated 23rd March 1914 as also the original document included therein which is alleged to be a counterpart of the lease executed between Mr. L. A. Pourwalle and Mr. S. Shamanna, I have the honor to state that the document in question is the counterpart of a lease executed by Mr. S. Shamanna in favor of Mr. L. A. Pourwale. In the body of the document, it is noted as follows:- x x x "ಶ್ರೀ ಮಾನ್ ಎಲ್ ಎ ಪೂರ್ವಾಲೆ ಯವರು - ಬಿ. ಎ. ಬಿ. ಎಲ್. ಅವರವರು, ಬೆಂಗಳೂರು ಅಲ್ಲಿ ಹೇಳಿಕೆಯವರು ಮತ್ತು ಶ್ರೀ ಎಸ್. ಶಾಮಣ್ಣ ಎಂಬವರು ಬೆಂಗಳೂರು ಅಲ್ಲಿ ವಾಸವಿದ್ದವರು ಹೇಳಿಕೆಯವರು ಸರ್ ಎಲ್ಲಿ ಬೇಕು, x x x 5 ಕೆ ಇ ಕ್ಷ ಇ ಅಂದು, ಅಂತೆ

The executant of this counterpart of the lease is really Mr. S. Shamanna as is evident from his signature at the end of the document. From the records, it will be seen that the original lease was executed on a stamp paper of Rs 75 by the above-said Lakshmi Chand and four others in favor of Mr. Shamanna. This so called counterpart of the lease, is a verbatim copy of the original lease, which was presented for registration as was impounded on the orders of the District Registrar and sent to this office for adjudication. On going through the document, it was found that the executant of the counterpart was not noted in the document in the nominative case, but it was noted in the dative case. Similarly the claimants were noted in the nominative case instead of in the dative case. Under these circumstances, the document was finally returned to the Sub-Registrar stating that it was no document, that unless it was rectified it could not be construed either as a duplicate or a counterpart. On a reference to the Inspector-General of Registration by the District Registrar on this the former officer writes that a certificate should be recorded on the document under Section 40 (1) of the stamp regulation and the stamped paper returned. I request to be instructed whether such a certificate could

be so endorsed on the document under Section 40 (1) Section that the document is no instrument as defined in the stamp regulation, as the executant shown in the body of the document is not the executant but the claimants, and as such it is no instrument properly so called.

I have the hon to be,
Sir
Your most obedient Servant,

Asst Commissioner
for Deputy Commissioner,
Mangalore District
(absent from the Station)

W.

G. R. S. 26]

Whether a certificate under Sec 40 of the Stamp Regn is necessary on a document, purporting to be a counterpart lease deed but written in an improper form.

File No. 31 ~~17~~

Serial No. 9

(4)

Diary No. of letter replied to 4031

General and Revenue Secretariat

(S.R)

, *the* 191 .

Date of issue 15-2-15

Signed by M Shamanna

Paper under disposal

No. R6 4071
& 15 Feby/15

To

The Dy Commissioner

Bangalore Dt.

Sir,

With reference to your letter no. S. 822 dt 7.4.14 soliciting instructions as to whether a certificate under Sec. 40(1) of the Stamp Regulation could be endorsed on a document purporting to be a Counterpart lease deed, but written in an improper form, I am directed to state that as the document was neither impounded by you under Sec 33, nor sent to you under Sec 38(2),

over.

SUBJECT.

there having been no question of the instrument not being duly stamped, a certificate under sec 40 is not called for

2. The enclosures to your letter are herewith returned.

I have &c

Sd/- Secy.

9.1.15

Ass. 108 51

List of enclosures,

Copied by

Examined by

GPB—25,000—4-3-13